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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Parts 2, 21 and 94 of the)
Commission's Rules Concerning Channel)
Assignments in the 27.5 - 29.5 GHz Band)

RM - 7722

TO: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

Peninsula Engineering Group, Inc. ("PEGI"), by its attorneys, hereby opposes the Petition for Rulemaking filed by Harris Corporation -- Farinon Division ("Harris") in the above-captioned matter. For the reasons stated below, PEGI submits that it is premature to adopt a rulemaking proceeding to address a specific channelization plan for the 27.5-29.5 GHz band ("28 GHz band") and to propose making the band available for assignment under Part 94, in addition to Part 21 of the Commission's Rules.

Statement of Interest

PEGI, which is located in San Carlos, California, designs, manufactures, markets and supports a line of proprietary microwave and cellular equipment. PEGI's products and services are used by local telephone companies, long-haul common carriers, private user networks, public utilities, government agencies and military, as well as the PTTs internationally. PEGI is actively involved in advancing microwave and cellular technologies and enhancing the performance of radio telecommunications systems. As such, PEGI is interested in maximizing use of frequency bands allocated to fixed and mobile services, including the 28 GHz band.

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Background

On April 19, 1991 Harris filed a Petition for Rulemaking requesting amendment to Parts 2, 21 and 94 of the Commission's Rules concerning the 28 GHz band. ^{1/} Specifically, Harris proposes adoption of a specified channelization plan for the 28 GHz band and requests that the Commission make this band available on a shared basis to users in the Operational-Fixed Microwave Radio Service ("OFS"). ^{2/}

Harris maintains that "in order to develop the 28 GHz band, a channelization plan must be adopted" because "[i]n the absence of a channelization plan, it is difficult for manufacturers to design and put equipment on the market. . . ." ^{3/} Harris cites the growing interest among common carriers to use the 28 GHz band due to congestion on the lower bands and the anticipated introduction of personal communications services ("PCS") as a basis for adopting its proposed channel plan.

Additionally, Harris seeks to open the 28 GHz band to private OFS users because, among other things, a separate allocation scheme is disfavored, the lower OFS bands are heavily used and at some future time the Commission "may license some PCS systems on a private carrier basis." ^{4/}

^{1/} See FCC Public Notice, Report No. 1845 (released May 15, 1991).

^{2/} Currently the 28 GHz band is allocated for use by common carriers in the fixed point-to-point microwave service and stations in the fixed-satellite service. See 47 C.F.R. §§ 2.106, 21.701(a), 25.202(a)(1).

^{3/} Harris Petition at 5, 6.

^{4/} Harris Petition at 9-10.

I. NO RULE CHANGE IS REQUIRED TO FOSTER
DEVELOPMENT OF THE 28 GHZ BAND

PEGI agrees with Harris that there is a “substantial developing need[] for products for the 28 GHz band.” ^{5/} However, PEGI disagrees that “rule changes are necessary” at this time, vis-à-vis adoption of a channel plan, for manufacturers to respond to this growing need. ^{6/}

The 28 GHz band is already allocated to common carrier fixed point-to-point microwave services and new products are currently under development for use in this band. The 28 GHz band is especially attractive to manufacturers because of the potential bandwidth currently available under the Commission’s existing rules. The larger bandwidth permits manufacturers, such as PEGI, to develop products that would otherwise be technically impossible if the band were subdivided into smaller bands as Harris suggests and adjacent bands were unavailable or could otherwise not be combined. Manufacturers need flexibility to develop new communications products responsive to evolving industry needs. Adopting a channel plan at this time would unnecessarily restrict, rather than enhance product development. ^{7/}

II. ADOPTING A CHANNELIZATION PLAN FOR THE 28 GHZ
BAND WOULD IMPEDE THE COMMISSION’S ABILITY TO
USE THE FREQUENCY BAND CONSISTENT WITH OTHER
PENDING DOCKETS

PEGI submits that adoption of a Notice of Proposed Rulemaking to address the specific channelization plan proposed by Harris is premature. In the alternative,

^{5/} Harris Petition at 4 (emphasis added).

^{6/} See id.

^{7/} Moreover, until the Commission concludes its present inquiry into PCS and other new communications services (see discussion below) adopting a channel plan which divides the spectrum into smaller bandwidth may not prove to be the most efficient use of the spectrum.

PEGI proposes the adoption of a Notice of Inquiry to allow the Commission, with the industry's assistance, to consider the development of the 28 GHz band consistent with current and anticipated future spectrum requirements. In this regard, several matters are currently pending before the Commission which bear directly on spectrum allocations. ^{9/} Adopting a channel plan for the 28 GHz band, prior to resolving the issues in these proceedings will unnecessarily restrict manufacturers' flexibility in developing equipment for new services and impede the Commission's ability to consider implementation of the new communications services in an orderly, efficient manner.

In 1990 the Commission initiated a "broad inquiry into the development and implementation of new personal communications services." ^{9/} PCSs include a wide variety of communications services, including an advanced digital cordless telephone technology ("CT-2") and PCN networks. As Harris correctly points out:

With the anticipated widespread implementation of personal communications services, there will be a growing need for microwave services to interconnect a multitude of micro-cells The short path lengths that are characteristic of the higher microwave bands such as the 28 GHz band will be particularly well-suited for connecting microcells because there will be large numbers of such cells in relatively close proximity to each other. ^{10/}

For this reason, manufacturers, including PEGI, are currently developing equipment to utilize the 28 GHz band. There is no reason to prematurely restrict development of such

^{9/} See Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Inquiry, 5 FCC Rcd. 3995 (1990) ("PCS Inquiry"). See also Motorola Satellite Communications, Inc. (File Nos. 9-DSS-P-91(87) & CSS-91-010) FCC Public Notice, April 1, 1991 ("IRIDIUM"); An Inquiry Relating to Preparation for the International Telecommunication Union WARC for Dealing with Frequency Allocations in Certain Parts of the Spectrum, Second Notice of Inquiry, 5 FCC Rcd. 6046 (1990), Report, FCC 91-188, adopted June 13, 1991 (see News Release, Mimeo 13542, released June 14, 1991).

^{9/} PCS Inquiry, 5 FCC Rcd. 3995 (1990).

^{10/} Harris Petition at 5.

equipment by adopting a channel plan before the Commission has reached a decision on PCS and like services. To the contrary, adoption of a Notice of Inquiry seeking suggestions from the industry on the appropriate channelization plan for the 28 GHz band will maintain maximum flexibility in meeting the spectrum requirements arising out of the related Commission proceedings. We suggest that this be accomplished by issuing a Further Notice of Inquiry in the PCS proceeding, Gen. Docket No. 90-314, once the Commission has reached an appropriate stage in that proceeding.

III. THE CURRENT FREQUENCY ALLOCATION IN THE 28 GHz BAND SHOULD NOT BE AMENDED

Harris provides no valid justification for its request that the 28 GHz band be opened to Part 94 OFS users. ^{11/} Harris' argues, among other things, that because the 28 GHz band is "underutilized, Part 94 eligibility . . . will serve the public interest by promoting maximization of use of the band." ^{12/} However, as Harris points out, common carriers are ready to begin extensive use of this band. Harris quotes from Pacific Bell's comments in the Hye Crest proceeding that "the common carrier band at 18 GHz is already saturated in some areas, and in fact congestion exists even at 23 GHz. . . ." Further, "[a]s soon as equipment capable of operating in the 27.5-29.5 GHz band is available, this spectrum will be utilized by common carriers." ^{13/} Pacific Bell described the 28 GHz band as "essential to the continued growth of basic telephone and other common carrier services" ^{14/} Therefore, opening the 28 GHz band to Part 94 users would only serve to exacerbate the spectrum shortage facing common carrier users.

^{11/} Harris Petition at 8.

^{12/} Harris Petition at 10.

^{13/} Harris Petition at 4 nn. 5, 6.

^{14/} Harris Petition at 6 quoting Pacific Bell (emphasis added).

Moreover, sufficient unused spectrum exists to satisfy current and future OFS user demand. To the extent that OFS users may require spectrum for the higher frequency bands for short haul microwave links to connect microcells, ^{15/} sufficient unused spectrum currently exists in the 31 GHz band to satisfy potential demand, and meet any congestion that might exist in the lower frequencies for private OFS users. Therefore, the Commission need not open the 28 GHz band to Part 94 users to maximize use of the band. In light of common carriers' current and anticipated need for spectrum, the Commission's existing allocation plan serves the public interest.

Consistent with its argument regarding Harris' proposed channelization plan, PEGI submits that it is too early to make specific changes to the 28 GHz allocation scheme given the status of other related Commission proceedings. For example, in the Notice of Inquiry on PCS, the Commission raised the possibility that "PCN-type services could operate on a common carrier or private carrier basis or both." ^{16/} The fact that the Commission has requested comments on this issue further supports PEGI's position that Harris' petition for rulemaking is premature and, therefore, no change should be made in the frequency allocation until the Commission has concluded its inquiry regarding new personal communications services. Again, the Commission's goals would be better served by issuing a Notice of Inquiry to develop a record consistent with other pending Commission matters.

CONCLUSION

For the foregoing reasons, Peninsula Engineering Group, Inc. opposes Harris' petition for rulemaking and, in the alternative, requests that the Commission

^{15/} See Harris Petition at 10.

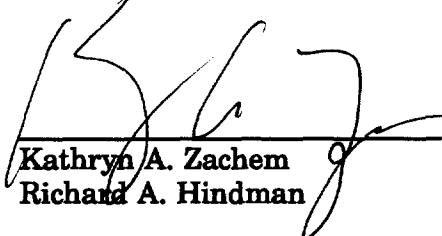
^{16/} PCS Inquiry, 5 FCC Rcd. at 3999.

initiate a Further Notice of Inquiry in the PCS Docket to invite suggestions as to an appropriate channelization plan and spectrum use for the 28 GHz band, consistent with other proceedings currently pending before the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marilyn D. Garrett, a secretary in the law firm of Wilkinson, Barker, Knauer & Quinn, certify that I have this 17th day of June, 1991 served a copy of the foregoing "Opposition to Petition for Rulemaking" by first-class U.S. Mail, postage prepaid, or by hand delivery, upon the following:

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